

## CALIFORNIA COASTAL COMMISSION

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April 17, 2007

Craig W. Kiley  
Lieutenant Colonel, U.S. Army  
District Engineer  
U.S. Army Corps of Engineers  
ATTN: Jane Hicks  
333 Market Street  
San Francisco, CA 94105-2197

Subject: Consistency Determination CD-013-07 (Nationwide Permit Program)

Dear Lt. Colonel Kiley:

On April 13, 2007, the California Coastal Commission objected to the above-referenced consistency determination. The basis for the Commission's objection is discussed in detail in the *Staff Report and Recommendation* prepared for the April 13, 2007, meeting. The Commission found that the proposed re-issuance of the Nationwide Permit Program was not consistent with Section 30233 of the California Coastal Act, an enforceable policy of the California Coastal Management Program (CCMP). Section 30233 provides, in part, that:

*The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland, provided, however, that in no event shall the size of the wetland area*

*used for such boating facility, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, be greater than 25 percent of the total wetland area to be restored.*

*(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

*(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

*(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*

*(7) Restoration purposes.*

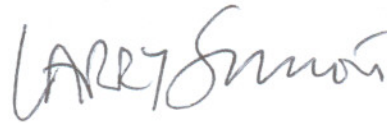
*(8) Nature study, aquaculture, or similar resource-dependent activities.*

The Commission found that the proposed NWP program is inconsistent with the wetland fill policy of Section 30233(a) of the Coastal Act for the following reasons: (1) it would authorize activities that are not normally allowable under Section 30233(a); (2) it does not require the applicant for a NWP to construct the least environmentally damaging alternative; and (3) it does not require mitigation for adverse impacts to wetland habitat.

The Commission's objection to this consistency determination will have the same effect as previous objections by the Commission to the NWP program (e.g., CD-003-02, CC-147-96). The staffs of the Corps and the Commission have informally agreed upon procedures that allow most activities qualifying for a NWP to continue without any significant delays. Upon receipt of notice of a pre-discharge notice or other notice of a NWP activity within a coastal area, the Corps sends the applicant a letter informing the applicant that the NWP is not valid until the applicant receives either a federal consistency concurrence or waiver from the Commission. Upon receipt of a copy this letter (usually within two weeks), the Commission staff sends a "Jurisdiction Letter" to both the Corps and the applicant identifying the Commission federal consistency or permit jurisdiction or, if appropriate, waiving federal consistency. If the activity does not require coastal development permit or federal consistency review, the Commission's jurisdiction letter ends the Commission's involvement for that activity. If additional Commission review is necessary, it will complete the process within the appropriate statutory or regulatory requirements. A NWP will not be valid for any qualifying activity until the Commission either concurs with a consistency certification or waives the requirement.

Please contact me at (415) 904-5288 should you have any questions regarding this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Larry Simon". The signature is fluid and cursive, with the first name "Larry" being more prominent than the last name "Simon".

Larry Simon  
Federal Consistency Coordinator

cc: CCC District Offices  
Corps of Engineers – Los Angeles District, Aaron Allen  
Corps of Engineers – South Pacific Division  
California Department of Water Resources  
Governor's Washington, D.C., Office  
OCRM